FILED

SEP 19 2003

CATHY A. CATTERSON
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff - Appellee, v. BENJAMIN SANCHEZ-PACHECO, Defendant - Appellant.	No. 02-35520 D.C. Nos. CV-01-62221-MRH CR-97-60108-MRH MEMORANDUM[*]

Appeal from the United States District Court
for the District of Oregon
Michael R. Hogan, District Judge, Presiding

Submitted September 8, 2003[**]
Portland, Oregon

Before: ALDISERT,[***] GRABER, and GOULD, Circuit Judges.

[*/] This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

[**] This panel unanimously finds this case suitable for decision without oral argument. Fed. R. App. P. 34(a)(2).

[***] The Honorable Ruggero J. Aldisert, Senior United States Circuit Judge for the Third Circuit, sitting by designation.

Petitioner Benjamin Sanchez-Pacheco appeals from the district court's denial of his § 2255 petition, arising from his conviction on methamphetamine-related charges. We affirm.

Petitioner's counsel was not deficient in failing to move for recusal of the trial judge. See Strickland v. Washington, 466 U.S. 668 (1984) (setting forth two-part test for determining whether petitioner received ineffective assistance of counsel). Counsel made a reasoned and reasonable tactical decision in advising Petitioner to have a bench trial and to do so before this judge.

Additionally, even if counsel's performance was somehow deficient, Petitioner cannot demonstrate prejudice, the second part of the Strickland test. A recusal motion probably would not have been successful. The knowledge of Petitioner's initial wish to plead guilty was acquired in the judge's judicial capacity. See United States v. Monaco, 852 F.2d 1143, 1147 (9th Cir. 1988) (noting that a party cannot attack a judge's impartiality based on information learned while acting in the judge's official capacity). Moreover, there is no evidence of a deep-seated antagonism that would have made fair judgment impossible. See Liteky v. United States, 510 U.S. 540, 555 (1994) (stating standard).

AFFIRMED.